

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of the Federal-State Joint Board)	
on Universal Service)	CC Docket No. 96-45
)	
Petition of the Minnesota Public Utilities)	
Commission for Agreement with Changes in)	
Definition of Service Areas for Exchanges)	
Served by CenturyTel, Citizens)	
Telecommunications Company, Frontier)	
Communications of Minnesota, Inc., Mid-)	
State Telephone Company, Scott-Rice)	
Telephone, United Tel Co of Minnesota (UTC)	
of Minnesota), Federated Telephone)	
Company, Melrose Telephone Company,)	
Winsted Telephone Company (TDS)	
Telecom), Eckles Telephone Company (Blue)	
Earth Valley Telephone Company), Lakedale)	
Telephone Company, and Farmers Mutual)	
Telephone Company.)	

COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION

INTRODUCTION

In accordance with the Federal Communication Commission's ("FCC" or "Commission") Public Notice dated August 12, 2003, the Alaska Telephone Association (collectively "ATA")¹ files these comments in opposition to the petition of the Minnesota

¹The Alaska Telephone Association is a trade association comprised of rural Alaska local exchange telephone companies. Its active members are Alaska Telephone Company; Arctic Slope Telephone Association Cooperative, Inc.; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative; KPU Telecommunications; Matanuska Telephone Association; Nushagak Electric & Telephone Cooperative, Inc.; OTZ Telephone Cooperative;

Public Utilities Commission (“MPUC”). Specifically, ATA finds the proposal to redefine the service areas of rural incumbent local exchange carriers alarming and the proffered justification abhorrent, baseless and in contradiction to the 1996 Telecommunications Act (“the Act”) and the principles of universal service.

Procedural History

Midwest Wireless Communications, LLC (“Midwest”) filed with the MPUC for designation as an eligible telecommunications carrier (“ETC”) for the purpose of receiving universal service funding for the area of Minnesota in which it was licensed by the FCC to serve as a Commercial Mobile Radio Service (“CMRS”) provider.

Essentially, the MPUC granted Midwest’s blanket request. Included within the Midwest service area are non-rural and rural telecommunications carriers. Of the rural carriers, some service areas are wholly within the area for which Midwest is licensed and others are only partially within it.

Designation of Eligible Telecommunications Carrier

Section 214(e)(2) of the Act empowers each state commission to make ETC designation decisions, however it requires a public interest finding in an area served by a rural telephone company. In circular reasoning, the MPUC accepted the opinion of its administrative law judge (“ALJ”) which concluded “that granting [Midwest’s] request

Summit Telephone Company, Inc., TelAlaska, Inc.; United Utilities, Inc.; and Yukon Telephone Company, Inc.

would promote the public interest. It would increase customer choice....”² Are we to understand that during its lengthy consideration of the legislation that became the 1996 Act, and its clear concern for the impact of a new business environment on rural telecommunications, that Congress did not know that the designation of a subsequent ETC in a market would give customer “a choice?” If “a choice” fulfilled the public interest test, there would be no reason to have special consideration for areas served by rural telephone companies because designating subsequent ETCs would always be in the public interest. Surely Congress recognized that and envisioned a more stringent evaluation that would consider the costs as well as the benefits.

Rural Service Areas

With its blanket acquiescence of Midwest’s request, the MPUC completely disregarded the value of the concept of rural service areas. Incumbent local exchange carrier (“ILEC”) service is provided to all of the customers in a rural service area. The MPUC is satisfied with providing equal universal service funding to a company that is willing to provide service to any of the customers in a rural service area. Although it professes its consideration and subsequent dismissal of “cream skimming” by the petitioner³, a reasonable business case would not have a CMRS provider applying for a

² MPUC Docket No. PT-6153/AM-02-686, *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier Under U.S.C. Sec. 214(e)(2)*, March 19, 2003, p.8.

³ CC Docket No. 96-45, *In the Matter of the Federal-State Joint Board on Universal Service*

Petition of the Minnesota Public Utilities Commission for Agreement with Changes in Definition of Service Areas for Exchanges Served by CenturyTel, Citizens Telecommunications Company, Frontier

license and building infrastructure to serve the more remote and sparsely populated areas while leaving adjacent more densely populated areas without service.

The Act is quite clear that “service area” entails a universal service obligation as well as support mechanisms.⁴ Clearly the MPUC supports Midwest’s request for the receipt of universal service funds for each of the customers it serves, but apparently has no concern for attendant obligations to serve the most rural customers. Obligation goes hand-in-hand with support to maintain affordable access for the more rural, higher cost customers.

Universal Service

The ILEC, with carrier of last resort responsibility, serves all of the customers, typically with postage stamp rates. Customers served by a rural telephone company pay affordable rates because the high costs of the provision of that service are defrayed by support from the universal service fund. The essence of universal service is to offer affordable access even in high cost regions of the country where there is no viable business case for even one provider to offer service.

In further justification of the required public interest determination, the MPUC touts “the option of mobility, broader calling scopes, numeric paging and text

Communications of Minnesota, Inc., Mid-State Telephone Company, Scott-Rice Telephone, United Tel Co of Minnesota (UTC of Minnesota), Federated Telephone Company, Melrose Telephone Company, Winsted Telephone Company (TDS Telecom), Eckles Telephone Company (Blue Earth Valley Telephone Company), Lakedale Telephone Company, and Farmers Mutual Telephone Company, July 1, 2003, p.4.

⁴ See 47 U.S.C. 214(e)(5) “The term ‘service area’ means a geographic area established by a State commission for the purpose of determining universal service **obligations** and support mechanisms [emphasis added].”

messaging.”⁵ As welcome as these services (and many others) would be, they have no relevance to the services required of universal service or supported by its funding. Mobility has not been recommended by the Federal State Joint Board on Universal Service nor been identified by the FCC as one of the services designated for universal service support.⁶

FCC Review

As was the intent of Congress, the Act requires a higher threshold of consideration in rural America – as compared to urban -- prior to the introduction of a competitive local telecommunications environment. The sensitivity of high cost, low density areas to change, and the dearth of resources to recover from imprudent change, are obvious justification for the legislative foresight.

Redefining the service area of a non-rural telephone company and designating an ETC are matters wholly in the purview of a state commission. Redefining the service area of a rural telephone company requires more. The fragility and potential for adverse impact on rural customers are such that both a state commission and the FCC must

⁵ See MPUC Docket No. PT-6153/AM-02-686, p.8.

⁶ FCC Rule Section 54.101(a) requires the following services for ETC designation: voice grade access to the public switched network; local usage; touch-tone service or its functional equivalent; single-party service; access to emergency services, including 911 and enhanced 911; access to operator services; access to interexchange services; access to directory assistance; toll limitation for qualifying low-income customers.

See Federal-State Joint Board on Universal Service, Public Meeting, July 31, 2003. Question by Commissioner Bob Rowe to a panelist: “Were you suggesting that either mobility or a number of carriers in some way met the statutory requirements for covered service or that the joint board ought to add those to the list of covered services?”, p. 107.

determine that such redefinition should occur. By its petition, the MPUC has made its determination. It and many customers in rural Minnesota await the review of this Commission.

A requirement for the redefinition of a rural telephone company service area is to take into account the recommendations of the Federal State Joint Board (“FSJB”).⁷ Neither in the documentation of its procedural history nor in this petition has the MPUC offered evidence that it has followed any recommendation of the FSJB. In fact, in its most recent en banc hearing on July 30, 2003, Joint Board members expressed concern for the number of CMRS providers requesting designation as ETCs, the logic of increasing the number of universal service support recipients in areas that cannot sustain a single telecommunications provider, and the sustainability of the universal service fund.⁸ Although the sustainability of the fund may not be an issue for the MPUC, under Section 254(2) the preservation of universal service is an imperative for this Commission.

Conclusion

The justification put forward by the MPUC to redefine the service areas of twelve Minnesota rural telephone companies is ill-considered, flawed, contrary to the Act, and

⁷ 47 U.S.C. 214(e)(5).

⁸ See Federal-State Joint Board on Universal Service, Public Meeting, July 31, 2003. Billy Jack Gregg: “[W]ether the Act promised all Americans access to a basic set of supported services, or did it promise access to an unlimited number of subsidized carriers?”, p. 104 and “Would you all agree that one of the implicit underpinnings of section 214(e)(2) of the Act is that there are certain areas in our nation where it doesn’t make any sense to have more than one subsidized carrier, and that to a large extent, the whole public interest exercise outlined in the Act is a determination or an attempt to determine what those areas are?”; Bob Rowe: “[W]hat specifically should be included in any service standards or at a public test.”, p.

without regard for any recommendations of the Federal State Universal Service Joint Board. The Alaska Telephone Association respectfully asks the FCC to deny this petition.

Dated this 22nd day of August, 2003.

ALASKA TELEPHONE ASSOCIATION

By: _____
James Rowe
Executive Director
201 E. 56th, Suite 114
Anchorage, Alaska 99519
907/563-4000

185; Jonathan Adelstein: Regarding “making ETC designations, ensuring that they aren’t designated for areas that are essentially cream skimming”, p. 170.